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No. 85-522

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

ALLIED BOND AND COLLECTION AGENCY,
Appellant,

v.

COMMONWEALTH OF MASSACHUSETTS,
Appellee.

On Appeal from the Supreme Judicial Court for the Commonwealth of Massachusetts

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BRIEF AMICUS CURIAE OF AMERICAN COLLECTORS ASSOCIATION, INC. IN SUPPORT OF APPELLANT, ALLIED BOND AND COLLECTION AGENCY

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INTEREST OF AMICUS

Amicus, the American Collectors Association ("ACA"), is an international organization of approximately 3,100 debt collection services. Members include sole proprietorships, partnerships and corporations, ranging from one-person offices to firms with more than 100 employees. ACA members handle the collection of past-due retail, professional and wholesale accounts receivable for nearly one million credit grantors. The question presented in

this suit, whether Massachusetts (or any state) can, consistent with the negative implications of the commerce clause of the United States Constitution, impose licensing, office, and record keeping requirements on out-of-state debt collection agencies, is of vital importance to ACA members. It has been the consistent position of the ACA that such requirements are unconstitutional and pose a grave threat to the economic vitality of the debt collection industry. The ACA, as the representative of numerous consumer debt collectors, has a unique interest in and perspective on the impact and validity of regulatory schemes such as the one at question in this litigation. This amicus curiae brief is filed with the consent of both parties.

SUMMARY OF ARGUMENT

The ACA supports the Jurisdictional Statement submitted by the appellant Allied Bond & Collection Agency. The ACA believes that the Constitution bars Massachusetts from requiring out-of-state collection agencies to obtain a license to conduct wholly interstate business in Massachusetts. Furthermore, the Massachusetts regulatory requirements merely serve to increase the burden of an already unduly burdensome scheme of inconsistent state regulations of debt collection agencies. Massachusetts has not demonstrated that its regulations further an interest that is sufficient to justify this increased burden on interstate commerce. Finally, less burdensome alternatives are available to Massachusetts which will adequately advance the interest served by its regulatory scheme.

ARGUMENT

The ACA fully supports and adopts the reasoning and arguments set forth by the appellant, Allied Bond & Collection Agency ("Allied") in the Jurisdictional Statement it has submitted to this Court. The Massachusetts Supreme Judicial Court's opinion seriously and substantially deviates from, misconstrues, and misapplies the established precedent of this Court which governs analysis of commerce clause cases. Moreover, the Massachusetts court fails to address adequately the serious question of whether states are constitutionally prohibited from requiring a license from an out-of-state business when that business's only contact with the state is through the channels of interstate commerce. As Allied's Jurisdictional Statement demonstrates, these significant issues alone should persuade this Court to note probable jurisdiction.

Additionally, as Allied's Jurisdictional Statement points out, the Massachusetts court misapprehends the nature of the burden imposed on interstate debt collection agencies by the multitude of state regulatory schemes governing debt collection activities and fails to appreciate the availability of less burdensome alternatives that will adequately meet the meagre interests which Massachusetts has shown are served by its regulatory scheme. These deficiencies constitute an independently sufficient reason why this Court should engage in plenary review of this case and reverse. The ACA, as representative of the debt collection industry as a whole, is uniquely situated to appreciate and underscore these particular errors.

The debt collection industry is comprised of approximately 5,000 full-time, predominantly small business offices. To conduct business interstate, like the appellant Allied, these collection agencies engage in collection activities through the use of interstate phone and mail. *See* Heller, *The issue: licensing of out-of-state agencies*, The

Collector, March 1983, at 10. In recent years, more and more states have sought to regulate the activities of intrastate agencies engaged in interstate debt collection. *Id.* These states have taken numerous non-uniform approaches to regulation, ranging from imposition of a modest fee to the establishment of a bewildering morass of offices, state-administered examinations, resident office managers, record keeping and reporting requirements, and local bank accounts. Mezines, *State licensing—interstate collections*, The Collector, August 1985, at 7. Compliance with this multitude of state-imposed restrictions and requirements imposes a heavy financial burden on agencies collecting debts out-of-state, with a particularly devastating impact on small, local agencies. *Id.* at 6-7. The cumulative burden imposed on interstate commerce demands the attention and action of this Court, which alone can accomplish the required relief.

Moreover, the insignificance of the interest Massachusetts demonstrates is furthered by its regulatory scheme cannot justify adding in any way to the magnitude of the burden imposed by the cumulative impact of these inconsistent regulations on interstate debt collection agencies. *See Silver v. Woolf*, 694 F.2d 8, 14 (2d Cir. 1982), *cert. denied*, 103 S. Ct. 1525 (1983) ("[l]ocal interests may be insufficient to justify State legislation which, because it differs from the laws of other states, significantly burdens commerce"); *see also Raymond Motor Transportation, Inc. v. Rice*, 434 U.S. 429 (1978); *Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959). As Allied demonstrates in its Jurisdictional Statement, the only interest clearly served by the Massachusetts office and record keeping requirements is to allow for periodic unannounced inspections of books and records which indicate whether collection agencies have complied with the requirement to remit payments due creditors within the required time. Such an insubstantial and insignificant interest does not justify any incremental in-

crease in the burden already imposed by the various existing regulatory schemes.

Finally, this Court should be aware of the creative alternatives which some states have adopted to replace local office and record keeping requirements. For example, Wisconsin, rather than requiring record retention at an in-state office, allows the collection agency to have inspections at its foreign home office if the agency bears the expense of sending Wisconsin inspectors to its office. Some states will accept access to a collection agency's computer terminals in lieu of the opening of branch offices. Other states create special categories for out-of-state agencies that do not conduct substantial collection activities in the state, exempting them from local office requirements. Mezines, *supra*, at 7. Any one of these alternatives would be a less burdensome means of achieving the interest sought to be advanced by the Massachusetts scheme.

CONCLUSION

For all of the foregoing reasons, Amicus ACA urges this Court to note probable jurisdiction of Allied's appeal and reverse the judgment of the Massachusetts Supreme Judicial Court.

Respectfully submitted,

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